IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2287 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARIDAS HIRALAL AGRAVAL

Versus

COMMISIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 08/05/2000

ORAL JUDGEMENT

1. Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on July 26, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Haridas Hiralal Agrawal under the provisions of the said Act.

2. The detaining authority took into consideration four offences registered against the petitioner under the Bombay Prohibition Act, so also the statements of two anonymous witnesses. The detaining authority considered the activities of the detenu as that of a bootlegger, as defined under the PASA Act and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. Mr. Patel, learned advocate for the petitioner, has raised a contention that a representation dated April 10, 2000, was made to the Home Minister on behalf of the detenu and certain documents were demanded. The said documents have not been supplied to the detenu. This has affected the right of the detenu of making an effective representation and, therefore, the continued detention is bad in law.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He submitted that the representation dated 10.4.2000, addressed to the Home Minister, was rejected by the Government on 11.4.2000. While rejecting the representation, the detaining authority was directed to supply the documents demanded therein. He, however, states that the detaining authority has received that communication on April 25, 2000. He submits that the authority is in the process of collecting the documents. The documents are not supplied as on today.

5. Considering rival side contentions, undisputedly, certain material documents relevant to the detention and necessary for making a representation have not been served upon the detenu. This has affected the right of the detenu of making an effective representation contemplated under Article 22(5) of the Constitution. This would render the continued detention bad in the eyes of law. The petition deserves to be allowed on that ground alone.

6. In the result, the petition is allowed. The impugned order of detention dated July 26, 1999, passed against the detenu is hereby quashed. The detenu-Haridas Hiralal Agrawal is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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